

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8312 OF 2007

Shri. Shivaji Bapu Ukirde .. Petitioner.
V/s.

Shri. Dnyanu Pandu Desai & Ors. .. Respondents.

Mr.N.V.Bandiwadekar for petitioner.

Mr.A.M.Kulkarni i/b.A.P.Kulkarni for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th NOVEMBER, 2007.

P.C.:

1. Aggrieved by the interference of the Lower Appellate Court in the order passed by the Trial Court granting temporary injunction in favour of the petitioner plaintiff in R.C.S.No.70 of 2007, the present petition is preferred under Article 227 of the Constitution of India challenging that order.

2. Mr.Bandiwadekar would urge that the Lower Appellate Court could not have interfered with the reasoned order of the Trial Court at an interlocutory

stage. More so, when the petitioner had pointed out valid title following possession to the suit land. In his submission, the Trial Court has considered all the materials and has concluded that the protected tenancy rights of the present plaintiff will prevail over the simple tenancy rights of the defendants. Further, the material produced demonstrates that the plaintiff is in a lawful possession of the suit land as protected tenant.

3. With the able assistance of Mr. Bandiwadekar, I have perused both the orders. The Lower Appellate Court has, in my view, rightly interfered with the order of the Trial Court. The Trial Court was not required to go into elaborate details at this prima-facie stage. It was not required to comment as to whether the protected tenancy would prevail over the simple tenancy or not. All that was necessary and relevant to be gone into at the prima-facie stage was whether the plaintiff has established his physical possession of the suit land. That is admittedly not established. The Trial Court had before it the very same material, which is referred to by the learned District Judge, Karad. The learned District Judge, Karad, in paragraph 20 of the impugned order referred to the 7/12 extracts, which are produced from the year 1982 to 2007. They show that the defendants are in

possession of the suit land. The defendants have produced the receipts, which have been issued by the sugar factory to whom they have supplied sugar-cane cultivated in the suit land. In such circumstances, having found that the physical possession is with the defendants, the Trial Court's order was rightly set aside.

4. In such circumstances, the order of the lower Appellate Court cannot be interfered with as if this is a Court of further Appeal. There is no error apparent nor perversity pointed out either. Writ petition is, therefore, misconceived and is accordingly dismissed.

5. However, despite the rejection of this writ petition, it is directed that the defendants to the suit and the respondents to the present petition shall not in any manner alienate, encumber, transfer or create any third party rights of whatever nature in respect of the suit property until the civil suit is decided and disposed of. Further, the Trial Court, while deciding the suit shall not be influenced by any of the observations made in the impugned order or this Court and shall decide the matter uninfluenced by the same and on its own merits and in accordance with law.

6. Petition dismissed.

(S.C.Dharmadhikari, J.)